STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of JAYWAN CALHOUN and JOY CALHOUN-THORNTON, Minors.[1]

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

ALICE DISOLETTA CALHOUN,

Respondent-Appellant,

and

JONATHAN MAURICE THORNTON,

Respondent.

UNPUBLISHED
June 2, 2009

No. 288409
Wayne Circuit Court
Family Division
LC No. 91-292406-NA

Before: Sawyer, P.J., and Murray and Stephens, JJ.

PER CURIAM.

Respondent Alice Disoletta Calhoun appeals as of right from the order terminating her parental rights to the minor child Joy pursuant to MCL 712A.19b(3)(a), (i), (j), and (l).[2] We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

[1] The court did not terminate respondent's parental rights to Jaywan Calhoun, and he is not a subject of this appeal.

[2] The trial court stated on the record that termination was warranted pursuant to MCL 712A.19b(3)(g), (i), and (j). However, the termination order stated that the parental rights of respondent and Jonathan Thornton were terminated pursuant to "MCLA 19b(3)(a)(i)(j)(l)." Although MCL 712A.19b(3)(a) was not pertinent to either respondent or Thornton, because a court speaks through its written orders, *Boggerty v Wilson*, 160 Mich App 514, 530; 408 NW2d 809 (1987), we will proceed as though the court relied upon subsections (3)(a), (i), (j), and (l).

Respondent contends that she was denied her due process rights because the judge who signed the order removing the children from respondent's custody worked as an assistant attorney general in 1994 when respondent's previous case first came to the probate court's attention. Procedural due process is a constitutional right, and this Court reviews such issues de novo. *Kampf v Kampf*, 237 Mich App 377, 381-382; 603 NW2d 295 (1999). However, respondent did not raise this issue in the trial court, and unpreserved constitutional claims are reviewed for plain error that affected respondent's parental rights. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999).

Respondent cites MCR 2.003(B), which provides that a judge is disqualified when the judge cannot impartially hear a case, including where the judge is personally biased or prejudiced or when the judge has personal knowledge of disputed evidentiary facts. Here, there was probable cause to believe that respondent had prior terminations of her parental rights to other children, and the judge who signed the removal order did not preside over the preliminary hearing or any other hearing in this matter. The preliminary hearing was held before a referee, who found that it was contrary to the welfare of the children to remain with respondent because of respondent's substantial protective services history. The bench trial was held before a different judge, who found that clear and convincing evidence was presented warranting termination of respondent's parental rights. Therefore, even if the first judge erred in signing the removal order, respondent has failed to demonstrate plain error that affected her substantial rights.

Respondent next contends that the trial court improperly terminated her parental rights immediately after the adjudicative hearing without holding a best interests hearing or any other hearing. In *In re AMAC*, 269 Mich App 533, 538; 711 NW2d 426 (2006), this Court held that the trial court erred by not affording the respondent her right to a dispositional hearing. This Court stated that the dispositional phase is especially important when one of the statutory grounds for termination is clearly and convincingly established during the adjudicative phase because it provides the respondent with an opportunity to persuade the court that termination is not in the child's best interests. *Id.* at 539. However, in *AMAC*, although both respondent's attorney and the guardian ad litem mentioned a future best interests hearing during the adjudicative hearing, the court rendered a written opinion without a best interests hearing. *Id.* at 535.

In the case at hand, it was clearly and convincingly established that respondent's parental rights had been terminated with regard to her other children. Thus, the dispositional phase was especially important to respondent. However, it does not appear that respondent was denied an opportunity to present evidence of the child's best interests. In addition, the trial court specifically found that, based on all the facts presented, termination of respondent's parental rights was in the child's best interests. Therefore, we find that the trial court did not plainly err in failing to hold a separate best interests hearing.

Respondent next contends that the trial court erred in terminating her parental rights pursuant to MCL 712A.19b(3)(g), (i), and (j).[3] To terminate parental rights, the trial court must

[3] The trial court did not cite MCL 712A.19b(3)(g) in its written order. Therefore, we do not
(continued…)

find that at least one statutory ground for termination has been met by clear and convincing evidence, and that termination is in the child's best interests. MCL 712A.19b(5); *In re Sours*, 459 Mich 624, 632-633; 593 NW2d 520 (1999). This Court reviews the trial court's findings under the clearly erroneous standard. *In re Sours*, *supra* at 633.

The court took judicial notice of the entire court file, which contained orders terminating respondent's parental rights to other children. Based on such evidence, the trial court did not clearly err in terminating respondent's parental rights pursuant to MCL 712A.19b(3)(i) or (l). Respondent's inability to provide for and properly care for her other children and her failure to obtain help with her parenting skills posed a risk of harm to this child, and therefore the court also did not clearly err in terminating respondent's parental rights pursuant to MCL 712A.19b(3)(j). Finally, given respondent's prior terminations and the fact that she did not have housing for her and her child or a legal source of income, the trial court did not clearly err in finding that termination was in this child's best interests.

Affirmed.

/s/ David H. Sawyer
/s/ Christopher M. Murray

(…continued)

consider this statutory ground.